

## Office of Statewide Health Planning and Development

**Healthcare Information Division**

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## FINAL STATEMENT OF REASONS

I. UPDATE

On May 6, 2005, the Office of Statewide Health Planning and Development (OSHPD) gave notice of proposed regulation changes to Section 90417 of Title 22 of the California Code of Regulations related to increasing the special fee charged to hospitals and long-term care facilities from 0.027% of gross operating costs to 0.034% of gross operating costs.

II. ADMINISTRATIVE REQUIREMENTS, SPECIFIC PURPOSES, AND RATIONALE

(See Initial Statement of Reasons, Rulemaking File Item 9.)

III. STUDIES, REPORTS, OR DOCUMENTS RELIED UPON IN PROPOSING AMENDMENTS

There were no additional data, studies, or reports which OSHPD has relied upon (see Rulemaking File Item 11 for studies, reports, or documents relied upon in proposing amendments).

IV. LOCAL MANDATE DETERMINATION

Since the proposed regulation change will impose requirements upon all California hospitals and long-term care facilities charged the special fee, and will only incidentally affect governmental hospitals, there is no local mandate created by the proposed revisions which would require state reimbursement.

V. ALTERNATIVES CONSIDERED

OSHPD must and has determined that there are no available alternatives which would be more effective in carrying out the purpose for which the action is proposed or less burdensome to affected private persons or businesses than the proposed action.



## VI. RESPONSE TO PUBLIC COMMENTS

During the public comment period, OSHPD received comments from 12 people representing 12 hospitals and 17 long-term care facilities. Statewide, there are approximately 450 hospitals and 1220 long-term care facilities. Comments received represent 2.7% of hospitals and 1.4% of long-term care facilities. Topics of written comments include:

- A. Opposition to the Proposed Special Fee Increase
- B. Alternative Funding to the Proposed Special Fee increase
- C. Public Comment Process
- D. Exemption from Proposed Special Fee Increase
- E. Deferral of Proposed Special Fee Increase
- F. Inaccurate Proposed Special Fee Increase
- G. Appropriate Balance of the California Health Data and Planning Fund
- H. Justification of the Proposed Special Fee Increase
- I. Funding for the Song Brown Family Physician Training Program
- J. Restoring Funds that Paid for the Song Brown Family Physician Training Program
- K. Mailing Addresses
- L. Poor Timeliness of Data Collected and Lack of Equity in Collecting Data

### A. Opposition to the Proposed Special Fee Increase

<u>Exhibit</u>	<u>Comment</u>
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1 A → 12 A	The commenters are opposed to the increase in the special fee charged to hospitals and long-term care facilities claiming they are facing other financial burdens that reduce the amount of services these facilities can provide to patients, such as low Medi-Cal reimbursement rates, lax Medi-Cal eligibility requirements, high liability insurance and Workers' Compensation insurance premiums, increasing nursing wages and staffing level requirements, and mandated seismic costs.
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	<u>Response</u>
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	Health and Safety Code Section 127280 instructs OSHPD to annually establish the rate for the special fee to fund OSHPD's data and planning programs, and limits the special fee not to exceed 0.035% of the annual gross operating costs of health facilities.
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	Before proposing the July 1, 2005 increase in the special fee, OSHPD carefully considered the circumstances of a fee increase and the Department of Finance and Health and Human Services Agency approved the proposed special fee increase. The California Health Policy and Data Advisory Commission approved the proposed special fee increase in a public meeting on December 13, 2004 with representatives of the health care industry present and participating.
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To a hospital or long-term care facility, the proposed special fee increase represents seven thousandths of a percent (0.007%) of its gross operating costs. For every \$10,000 of gross operating cost, the proposed fee increase is \$0.70. The table below shows the dollar value relationship of the special fee increase to the facilities' gross operating costs for those who have submitted written comments opposing the fee increase. The table demonstrates that the proposed increase in the special fee is not a significant increase in costs for any facility and will not place any facility in financial jeopardy.

Exhibit No.	Facility Name	Operating Costs	Proposed Fee Increase
1	Unidentified Long-term Care Facility	?	? x 0.00007
2	Mayers Memorial Hospital	\$ 15,023,335	\$ 1,052
3	Vienna Convalescent Hospital	\$ 7,054,823	\$ 494
4	Courtyard Health Care Center - Davis	\$ 4,717,281	\$ 330
5	Glenn Medical Center	\$ 6,723,074	\$ 471
6	Arbor Hills Nursing Center	\$ 6,616,606	\$ 464
6	Castle Manor Convalescent Center	\$ 6,304,616	\$ 442
6	Cedar Crest Nursing & Rehabilitation Center	\$ 5,905,291	\$ 414
6	English Oaks Convalescent Hospital & Rehabilitation Center	\$ 10,636,037	\$ 744
6	Friendship Manor Nursing & Rehabilitation Center	\$ 6,466,712	\$ 453
6	Lakeside Special Care Center	\$ 3,866,387	\$ 271
6	Lakeview Terrace Special Care Center	\$ 3,330,153	\$ 233
6	Newport Nursing & Rehabilitation Center	\$ 3,427,630	\$ 240
6	Pleasanton Nursing & Rehabilitation Center	\$ 8,479,863	\$ 593
6	Plum Tree Care Center	\$ 5,519,263	\$ 387
6	Stanford Court Nursing Center - Santee	\$ 6,593,055	\$ 462
6	Vista Manor Nursing Center	\$ 6,529,738	\$ 457
7	Colusa Regional Medical Center	\$ 12,858,569	\$ 900
8	Kaweah Delta Healthcare District	\$ 269,531,572	\$ 18,867
9	Woods Health Services	\$ 4,603,334	\$ 322
10	Sutter Tracy Community Hospital	\$ 51,517,249	\$ 3,606
11	Sierra View District Hospital	\$ 78,039,601	\$ 5,462
12	Sharp Chula Vista Medical Center	\$ 140,846,175	\$ 9,860
12	Sharp Coronado Hospital	\$ 42,089,280	\$ 2,946
12	Sharp Grossmont Hospital	\$ 284,075,928	\$ 19,885
12	Sharp Mary Birch Hospital for Women	\$ 57,656,191	\$ 4,036
12	Sharp Memorial Hospital	\$ 346,581,202	\$ 24,260
12	Sharp Vista Pacifica	\$ 1,355,709	\$ 95
12	Lakeview Home	\$ 496,318	\$ 35

OSHPD has no control over the other financial burdens identified, such as Medi-Cal reimbursement rates, Medi-Cal eligibility requirements, liability insurance and Worker's Compensation insurance premiums, nursing wages and staffing levels, or seismic requirements mandated by statute.

Those that have stated opposition to the proposed fee increase fail to mention or recall that OSHPD reduced the special fee last year in an emergency rulemaking effective April 26, 2004. The special fee charged to hospitals was reduced from 0.035% of gross operating costs to 0.027% of gross operating costs, and the special fee charged to long-term care facilities was reduced from 0.0312% of gross operating costs to 0.027% of gross operating costs. In the Informative Digest section of public notice published last year (Notice File Number Z-04-0511-08), OSHPD clearly indicated that it may have to increase the special fee in subsequent years:

"By collecting less revenues than the appropriation to pay for the required collection, processing, and dissemination of health facility financial and utilization data, and hospital patient-level data, the reserve balance of the California Health Data and Planning Fund will be reduced. However, in subsequent years, the Office may have to increase the special fee to collect revenues equal to the budget appropriation for the Office's data programs."

When OSHPD reduced the special fee effective April 26, 2004 it was unanticipated that the \$4 million per year Song Brown Family Physician Training Program would be funded through the California Health Data and Planning Fund in fiscal year 2004-05. The combination of last year's reduced fee and funding the Song Brown Family Physician Training Program has reduced the reserve balance in the California Health Data and Planning Fund to an extremely low level for the 2004-05 fiscal year, \$662,000. According to the Governor's budget, the California Health Data and Planning Fund is expected to fund 50% of the Song Brown Family Physician Training Program for the 2005-06 fiscal year. On July 1, 2005, if the special fee is any less than the one proposed, there will be a deficiency in the California Health Data and Planning Fund for the 2005-06 fiscal year.

#### B. Alternative Funding to the Proposed Special Fee increase

##### Exhibit

1 B

##### Comment

"This may well be a valuable program, but the people of the great state of California need to pay for these benefits equally."

##### Response

Health and Safety Code Section 127280 instructs OSHPD to annually set the rate of the special fee charged to hospitals and long-term care facilities

to pay for OSHPD's health data and planning programs. OSHPD cannot charge individual people in the state.

### C. Public Comment Process

#### Exhibit

2 C

#### Comment

"I suspect that this call for comments satisfies the legal requirement for increasing our fees, rather than any serious consideration of not raising our fees, just wanted you to know it is not OK !"

#### Response

OSHPD has seriously considered the circumstances of a fee increase and is following the Administrative Procedures Act to amend Section 90417 of Title 22 of the California Code of Regulations. The proposed increase in the special fee is necessary.

### D. Exemption from Proposed Special Fee Increase

#### Exhibit

4 D

#### Comment

"I am asking you to not increase this rate for independent / single operators, for we are not on equal financial footing with medium to large operators. We do not have the large revenue pools to be self-insured so we can take money from one pocket, show it as cost on our cost reports and then place it in our other pocket. For we independents, for every dollar we show being spent is actually spent to someone other than ourselves." (This comment was from a representative of a long-term care facility)

#### Response

The rate of the special fee charged to long-term care facilities is the same rate for all long-term care facilities and is based on the facilities' gross operating costs. Medium to large long-term care facilities will have higher gross operating costs and therefore higher fees.

### E. Deferral of Proposed Special Fee Increase

#### Exhibit

5 E

#### Comment

"I believe that OSHPD should defer this increase until such time as the State of California returns reimbursement for Medi-Cal to levels we experienced prior to implementing the 2003 rate freeze." (This comment was from a representative of a hospital)

#### Response

If OSHPD defers the proposed special fee increase, there will be a deficiency in the California Health Data and Planning Fund for the 2005-06

fiscal year. OSHPD does not intend to defer the increase in the special fee. OSHPD has no control over Medi-Cal reimbursement levels.

#### F. Inaccurate Proposed Special Fee Increase

<u>Exhibit</u>	<u>Comment</u>
8 F	"I write in opposition to the proposed increase of special fees charged to hospitals and long term care facilities from .027% of gross operating costs to .34% of gross operating costs."
10 F	"I received today a memo dated 5/4/05 sent to our accounting department, not the CEO of the Hospital stating intent to increase special fee from .027% of gross operating costs to 0.34 %. Do you mean .034%? If so, have you sent a correction out?"

#### Response

OSHPD's proposed change in the special fee is to increase from 0.027% of hospitals' and long-term care facilities' gross operating costs to 0.034% of gross operating costs, not 0.34%.

OSHPD mailed a letter to hospitals and long-term care facilities that contained a typo in the letter with the proposed special fee indicated as 0.34% of gross operating costs. OSHPD did not send out a correction to the letter because the Notice of Proposed Rulemaking, Initial Statement of Reasons, and text of the proposed regulation were also mailed to all hospitals and long-term care facilities correctly identifying the proposed special fee as 0.034% of gross operating costs.

#### G. Appropriate Balance of the California Health Data and Planning Fund

<u>Exhibit</u>	<u>Comment</u>
8 G	"I note that the reserve balance of the California Health Data and Planning Fund remains a positive \$662,000. While this fund balance may not meet the ideal balance established by the Office itself, it is positive-more than can be said for many hospitals now operating with negative margins in the state of California. Further, I am unfamiliar with the Song Brown Program which resulted in an unanticipated charge for \$4.2 million in funding to the Health Data and Planning Fund. I believe the Song Brown Program should have been identified in more detail in your statement of reasons along with a statement as to why this program provided in the unanticipated charge."

#### Response

For fiscal year 2004-05, the reserve balance of the California Health Data and Planning Fund is projected to be \$662,000. If the special fee is not increased, there will be a deficiency in the California Health Data and

Planning Fund for fiscal year 2005-06. The special fee was reduced for the fiscal year 2004-05 to 0.027% of hospitals' and long-term care facilities' gross operating costs, and it was unanticipated that the California Health Data and Planning Fund would also begin funding the Song Brown Family Physician Training Program.

OSHPD, with the concurrence of the Department of Finance, determined that the reserve balance of the California Health Data and Planning Fund should fall in the range between \$4.5 million and \$5.0 million. The proposed fee increase would narrowly avoid a deficiency in the reserve balance of the California Health Data and Planning Fund for the 2005-06 fiscal year and will not increase it to the ideal range.

The Department of Finance, Health and Human Services Agency, and California Health Policy and Data Advisory Commission agree with OSHPD that the special fee must be increased.

#### H. Justification of the Proposed Special Fee Increase

Exhibit  
8 H

Comment

"Again, I am opposed to the proposed increase and do not find that the OSHPD has adequately justified its proposed fee increase."

Response

OSHPD disagrees. The Initial Statement of Reasons is clear and does justify the proposed fee increase in the Necessity section.

#### I. Funding for the Song Brown Family Physician Training Program

Exhibit  
9 I

Comment

"Your letter advises that the Office proposes to amend Section 90417 in order to increase the reserve balance of the California Health Data and Planning Fund because the Governor and the Legislature have raided the fund to pay for the Song Brown Family Physician Training Program, and plan to do so again next year. This is a blatant tax increase.

The intent of the Data Fund is solely to be used for data collection and analysis."

12 I

"We consider the use of the California Health Data and Planning Fund to fund the Song Brown Program to be inappropriate use of this fund. While the Song Brown Program may be a worthwhile program in support of family practice residency programs, it does not directly benefit entire communities, much less all hospitals and long-term care facilities. This fund should be used to support and develop statutorily

required and needed improvements to existing data collection programs that benefit all health care providers and facilities."

Response

Health and Safety Code Section 127280 instructs OSHPD to annually establish the fee structure to pay for the data collection programs and "any other health-related programs administered by the office." The Song Brown Family Physician Training Program is a health-related program administered by OSHPD. Before the 2004-05 fiscal year, the Song Brown Family Physician Training Program was funded by the General Fund. Beginning in the 2004-05 fiscal year, the Song Brown Family Physician Training Program is funded by the California Health Data and Planning Fund.

J. Restoring Funds that Paid for the Song Brown Family Physician Training Program

Exhibit  
9 J

Comment

"The Song Brown Family Physician Training Program should be financed through general fund revenues rather than the Data Fund. Hospitals and long-term care facilities and their patients and residents, respectively, should not be burdened with this inappropriate raiding of special use funds.

The Data Fund should have the \$4.2 million used for the Song Brown program restored to it."

Response

The Song Brown Family Physician Training Program is a health-related program administered by OSHPD. Using the California Health Data and Planning Fund to pay for the Song Brown Family Physician Training Program is appropriate according to Health and Safety Code Section 127280. The \$4.2 million spent in fiscal year 2004-05 will not be restored to the California Health Data and Planning Fund.

K. Mailing Addresses

Exhibit  
10 K

Comment

"I received today a memo dated 5/4/05 sent to our accounting department, not the CEO of the Hospital . . ."

Response

OSHPD sent a letter, the Notice of Proposed Rulemaking, Initial Statement of Reasons, and text of the proposed regulations to all hospital and long-term care facility administrators at each facility's mailing address that each facility reported to OSHPD. If OSHPD's mailing didn't go to the hospital administrator, then the hospital's report preparer



did not complete the correct hospital mailing address, or someone in the hospital mishandled the mail.

#### L. Poor Timeliness of Data Collected and Lack of Equity in Collecting Data

Exhibit  
10 L

Comment

"My reason for being against the fee increase is due to the poor timeliness in which data collected is reported back and to the lack of equity in collecting data in that surgery centers and Kaiser do not report equally to Hospitals."

Response

The most recent annual disclosure report filed for this particular hospital was for the report period ended December 31, 2003. That report was initially due on April 30, 2004, however, the hospital's report preparer requested 59 days of extension time. It took the hospital's report preparer 180 days to complete and submit the report to OSHPD.

The report was received by OSHPD on June 29, 2004. OSHPD finished reviewing the report August 13, 2004. It took OSHPD 45 days to finish the report review. The data would be more timely if extension days were not used by the hospital's report preparer.

The lack of equity in collecting data referred to is based in statute. Health and Safety Code Section 128760 (f) limits the data OSHPD collects from Kaiser hospitals. Also, there are not as many reporting requirements in statute for surgery centers as there are for hospitals. OSHPD cannot change or add statutes.

These comments do not change the fact that the special fee must be increased for OSHPD to have the funds to pay for its health data and planning functions.